

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act.

SUBJECT: Title IV-E Foster Care Eligibility Reviews

LEGAL AND RELATED REFERENCES:
Title IV-E of the Social Security Act and 45 CFR 1356

PURPOSE:
The purpose of this program instruction (PI) is to provide additional clarification to States concerning periodic title IV-E foster care eligibility reviews and their relationship to other aspects of title IV-E implementation and enforcement.

BACKGROUND:
On January 25, 2000, the Administration for Children and Families (ACF) issued a final rule (65 FR 4091) to revise ACF's approach to monitoring a State agency's compliance with requirements under section 472(a) and (b) of the Social Security Act (the Act) and codify the periodic eligibility review process.

The periodic title IV-E foster care eligibility reviews addressed in the regulations focus on the State agencies' compliance with eligibility criteria contained at section 472(a) and (b) of the Act and the implementing regulations at 45 CFR 1356.21 to ensure that children, for whom Federal financial payments are claimed, are program eligible and are placed with eligible foster care providers. The regulations at 45 CFR 1356.71 set forth the requirements governing Federal review of a State agency's compliance with the title IV-E eligibility provisions.

INFORMATION:
The title IV-E foster care eligibility review structure set forth in the January 2000 final rule does not, and was not intended to, replace other types of eligibility reviews, audits or monitoring processes that may be conducted by the Federal government. This includes, but is not limited to, monitoring processes conducted by the Office of the Inspector General (OIG), the General Accounting Office (GAO), or those that arise out of ACF Regional Office quarterly review of

title IV-E financial claims filed by State agencies. Thus, the regulations at 45 CFR 1356 do not affect the Federal government's traditional authority to conduct audits and take disallowances. The periodic title IV-E foster care eligibility reviews do not diminish State agency responsibility to account for Federal grant funds and meet audit requirements established by statute and regulations.

The review structure set forth in this regulation is primarily a means of managing the program in accordance with statutorily mandated eligibility provisions and secondarily a tool for fiscal accountability. The recovery of title IV-E funds expended by States for non-title IV-E eligible children or facilities is simply the prescribed remedy following the identification of funds spent on those children or facilities. More important is ensuring State adherence to requirements that impact the child's welfare, e.g., judicial determinations of contrary to the welfare and reasonable efforts. In drafting the regulation, ACF was keenly aware of the need to manage the foster care program on a regular, albeit intermittent, basis. The regulation reflects this management purpose. This purpose is evident on the face of the regulation inasmuch as it provides only for periodic reviews and for extrapolated disallowances only after a determination of non-compliance following a State's implementation of program improvement. The regulation is not primarily a financial management tool since it is generally inoperative in two years out of every three. In addition to the purposes served by this regulation, ACF must be able to monitor foster care payments at all times, in order to remain fiscally accountable for the appropriated funds which it manages.

Historically, there have been multiple avenues for review of State eligibility decisions. In the past, for example, ACF conducted reviews in accordance with a "Financial Review Guide for On-Site Reviews of the Title IV-E Foster Care Program" while the Department's Office of the Inspector General (OIG) likewise conducted reviews in accordance with its own protocols. The ACF also reviewed States' financial statements and reports and conducted other fiscal reviews. With the publication of the regulation at 45 CFR 1356.71, ACF did nothing more than codify its procedures for conducting periodic reviews of States' title IV-E implementation and procedures. The regulation did not, and does not, purport to disrupt those other avenues of review, such as OIG audits, which are necessary to ensure the financial integrity of the program.

To determine whether expenditures claimed contain costs that are allowable, ACF may examine any of the State agency's documents, papers and specific recipient records pertinent to the title IV-E foster care program. Said examination may occur at any time pursuant to a review of a State's title IV-E financial report (Form ACF-IV-E-1), a discrete process that is authorized under regulations at 45 CFR 74.53, and is not subject to the procedural requirements outlined in 45 CFR 1356.71. Eligibility issues outside the context of periodic reviews will continue to be addressed in ACF or OIG audits or other reviews.

INQUIRIES TO: ACF Regional Offices

/s/

Wade F. Horn, Ph.D.
Assistant Secretary
for Children and Families